

FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA ex rel.
CORI RIGSBY and KERRI RIGSBY

RELATORS/COUNTER-DEFENDANTS

v.

CASE NO. 1:06cv433-LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY

DEFENDANT/COUNTER-PLAINTIFF

and

HAAG ENGINEERING CO.; and ALEXIS KING

DEFENDANTS

**STATE FARM'S MEMORANDUM IN SUPPORT OF ITS UNOPPOSED
LOCAL RULE 79 MOTION FOR LEAVE TO FILE UNDER SEAL
ITS REBUTTAL IN SUPPORT OF ITS [739] MOTION TO DISMISS DUE TO THE RIGSBYS'
REPEATED AND CALCULATED VIOLATIONS OF THIS COURT'S SEAL ORDER**

(With Good Faith Certificate)

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State Farm Fire and Casualty Company (“State Farm”) submits this Memorandum in Support of its Unopposed Local Rule 79 Motion for Leave to File Under Seal its Rebuttal in Support of its [739] Motion to Dismiss Due to the Rigsbys’ Repeated and Calculated Violations of this Court’s Seal Order.

STATEMENT REGARDING NONOPPOSITION

Prior to filing this motion, State Farm conferred on this matter with the Rigsbys and Haag. (Robinson Decl. at ¶3, Ex. B to Mtn.) Without prejudice to their respective positions either opposing or supporting State Farm’s [739] Motion to Dismiss, in whole or in part, the Rigsbys and Haag do not oppose the relief requested in this Motion, specifically: permission to file State Farm’s forthcoming Rebuttal in support of its [739] Motion to Dismiss under seal. (Good Faith Certif. at ¶2, Ex. A to Mtn.)

INTRODUCTION

On July 29, 2010 and August 2, 2010, State Farm deposed The Rendon Group, Inc. (“TRG”). ([698] at 1.) During the course of that Rule 30(b)(6) deposition, counsel for TRG invoked this Court’s [406] Consent Protective Order and designated certain portions of TRG’s testimony by John Rendon as “Protected Information,” subjecting it to heavy restrictions with respect to use and disclosure. *See* ([406] Consent Prot. Order at ¶3) (describing restrictions on Protected Information). Subsequent to the deposition, TRG supplemented certain answers in writing and designated the entirety of its written supplement as “Protected Information.” ([753-2] at ¶4.)

The [406] Consent Protective Order provides that “[i]nformation shall be designated as ‘Protected Information’ only upon a good faith belief that the information is confidential, trade secret, or proprietary information and subject to protection under Rule 26 of the Federal Rules of Civil Procedure.” ([406] at ¶1.) State Farm maintains that none of the testimony given by TRG meets that standard.

After conferring with TRG in an attempt to resolve this matter informally, *e.g.*, ([76-3]), State Farm filed its [756] Sealed Motion to Declassify Portions of The Rendon Group, Inc.'s Deposition from "Protected Information" Status under the [406] Consent Protective Order. That motion remains pending.

Under the [745] Order, State Farm's Rebuttal in Support of its [739] Motion to Dismiss is due this coming Monday, September 27, 2010 – which will almost certainly predate the resolution of State Farm's [756] Sealed Motion to Declassify. In its forthcoming Rebuttal, State Farm needs to address certain TRG testimony currently classified as "Protected Information" under the [406] Consent Protective Order. Accordingly, it needs to submit the complete rebuttal and its exhibits under seal, at least until the Court rules on the [756] Sealed Motion to Declassify and perhaps decides to declassify the referenced TRG testimony. State Farm also proposes to file in CM/ECF an unsealed and partially redacted copy of its rebuttal (and exhibits thereto) without disclosing any currently "Protected Information."

INFORMATION REQUIRED BY UNIF. L. CIV. R. 79

I. NONCONFIDENTIAL DESCRIPTION OF WHAT IS TO BE SEALED

State Farm requests leave for it to file its forthcoming Rebuttal in Support of its [739] Motion to Dismiss (with all exhibits), under seal. State Farm will of course serve complete copies of its Rebuttal upon all Parties' counsel by e-mail and United States Mail. State Farm also proposes to file in CM/ECF an unsealed and partially redacted copy of its rebuttal (and exhibits thereto), without disclosing any currently "Protected Information."

II. SEALING IS NECESSARY AND ANOTHER PROCEDURE WILL NOT SUFFICE

The [406] Consent Protective Order provides that "[i]nformation shall be designated as 'Protected Information' only upon a good faith belief that the information is confidential, trade secret, or proprietary information and subject to protection under Rule 26 of the Federal Rules of Civil Procedure." ([406] at ¶1.) State Farm maintains that none of the testimony given by TRG meets that standard and State Farm has "move[d] the Court for an order removing the Protected Information

designation” from all so-designated portions of TRG’s deposition testimony and written supplementation. ([406] at ¶6); *see* ([756] Sealed Motion to Declassify.) However, the briefing on that motion remains open and it has thus not yet been decided.

The [406] Consent Protective Order provides that “[i]f it is deemed necessary to bring to the attention of the Court any Protected Information, the party seeking to use the Protected Information shall first seek the Court’s permission, pursuant to Local Rule 79, to file the ...document containing such information or reference in a sealed container....” ([406] at ¶8.)

Fed. R. Civ. P. 7(b)(1) requires that “[a] request for a court order must be made by motion” and Miss. Unif. L. Civ. R. 79(b) requires that “[e]very document used by parties moving for or opposing an adjudication by the court ...must be filed with the court.” There is no other method by which State Farm may bring the designated testimony before the Court without violating the [406] Consent Protective Order’s prohibitions on public disclosure of “Protected Information” other than by filing it under seal.

III. REFERENCE TO GOVERNING CASE LAW

The Fifth Circuit has affirmed a trial court’s right to place documents under seal to protect them from “‘public view or dissemination until such time as the ...need for confidentiality ...can be determined....’” *Sanders v. Shell Oil Co.*, 678 F.2d 614, 618 (5th Cir. 1982) (quoting record below). “‘It is well-established that the fruits of pretrial discovery are, in the absence of a court order to the contrary, presumptively public,’ but Rule 26(c) permits a federal judge to override this presumption upon a showing of ‘good cause.’” *In re Enron Corp. Securities, Derivative & “ERISA” Litigation*, 229 FRD 126, 130 n. 8 (S.D. Tex. 2005) (quoting *San Jose Mercury News, Inc. v. U.S. Dist. Court Northern District (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1991) (citing *Citizens First Nat’l Bank v. Cincinnati Ins. Co.*, 178 F.3d 943, 944-45 (7th Cir.1999); *Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 789

(1st Cir. 1988); and *In re Agent Orange Product Liability Litig.*, 821 F.2d 139, 145-46 (2d Cir. 1987)). For all the reasons addressed above, good cause exists for State Farm to file these papers under seal.

IV. PROPOSED ORDER

As required by Miss. Unif. L. Civ. R. 79(e)(4)(E), State Farm will tender the Court a proposed order granting the relief it requests herein and reciting the findings required by governing case law to support the sealing.

CONCLUSION

For the foregoing reasons, the Court should grant State Farm's motion and permit it to file its forthcoming Rebuttal in Support of its [739] Motion to Dismiss (with all exhibits), under seal. State Farm further requests leave to file in CM/ECF an unsealed and partially redacted copy of its rebuttal in support of its [739] Motion to Dismiss (and exhibits thereto), without disclosing any "Protected Information."

This the 22nd day of September, 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, E. Barney Robinson III, one of the attorneys for State Farm Fire and Casualty Company, do hereby certify that I have this day caused a true and correct copy of the foregoing instrument to be delivered to the following, via the means directed by the Court's Electronic Filing System and as further described below:

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